

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

TIMOTHY PATRICK McKENNA,

Petitioner,

v.

D. CUEVA,

Respondent.

No. 2:23-CV-0556-DJC-DMC-P

ORDER

Petitioner, a prisoner proceeding pro se, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On October 23, 2023, the Magistrate Judge filed findings and recommendations herein which were served on the parties, and which contained notice that the parties may file objections within the time specified therein. No objections to the findings and recommendations have been filed.

The Court has reviewed the file and finds the findings and recommendations to be supported by the record and by the Magistrate Judge's analysis.

Accordingly, IT IS HEREBY ORDERED as follows:

1. The findings and recommendations filed October 23, 2023, ECF No. 18, are adopted in full.

2. Respondent's unopposed motion to dismiss, ECF No. 12, is GRANTED.

3. This action is DISMISSED as untimely.

4. The Court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253 as Petitioner has not made a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c)(2).

5. Petitioner's motion to vacate the sentence, ECF No. 16, is DENIED as moot.

6. The Clerk of the Court is directed to enter judgment and close this file.

IT IS SO ORDERED.

Dated: **February 2, 2024**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE